

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission	:	
On Its Own Motion	:	
	:	ICC Docket No. 11-0710
In re Proposed Contracts Between	:	
Chicago Clean Energy, LLC and Ameren	:	
Illinois Company and Between Chicago	:	
Clean Energy, LLC and Northern Illinois	:	
Gas Company for the Purchase and Sale	:	
of Substitute Natural Gas Under the	:	
Provisions of Illinois Public Act 97-0096.	:	

**VERIFIED COMMENTS ON REHEARING OF
THE ECONOMIC DEVELOPMENT INTERVENORS**

COMPRISED OF:

THE ILLINOIS AFL-CIO,
THE CHICAGO & COOK COUNTY BUILDING & CONSTRUCTION TRADES COUNCIL,
THE HISPANIC AMERICAN CONSTRUCTION INDUSTRY ASSOCIATION,
THE ILLINOIS COAL ASSOCIATION,
THE MECHANICAL CONTRACTORS ASSOCIATION,
THE ILLINOIS FAITH BASED ASSOCIATION,
PASTORS UNITED FOR CHANGE,
THE CALUMET AREA INDUSTRIAL COMMISSION, and
THE SOUTH CHICAGO CHAMBER OF COMMERCE

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Dated: April 9, 2012

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Pursuant to the March 14, 2012, Ruling of the Chief Administrative Law Judge (“Chief ALJ”), the Economic Development Intervenors (“EDI”), by and through their attorneys, the Law Office of Michael A. Munson, respectfully submit these Verified Comments on Rehearing of the Final Order entered by the Illinois Commerce Commission (the “Commission”) on January 10, 2012, which was served upon the parties the same day.

I. INTRODUCTION

The Economic Development Intervenors speak for the interests of working people in Illinois, particularly in and around the South Side of Chicago. Representing organizations that include union members, non-union members, community groups, and church groups, the Economic Development Intervenors are specifically comprised of:

- (1) Illinois American Federation of Labor-Congress of International Organizers (the “Illinois AFL-CIO”);
- (2) the Chicago & Cook County Building & Construction Trades Council (the “Trades Council”);
- (3) the Hispanic American Construction Industry Association (“HACIA”);
- (4) the Illinois Coal Association;
- (5) the Mechanical Contractors Association;

- (6) the Illinois Faith Based Association;
- (7) Pastors United for Change; and
- (8) the Calumet Area Industrial Commission, and
- (9) the South Chicago Chamber of Commerce.

Collectively, these parties believe that the clean coal substitute natural gas brownfield facility (the “SNG Facility”), to be built by Chicago Clean Energy, LLC (“CCE”), will offer tremendous benefits to the City of Chicago, the surrounding region, and the State of Illinois.

The Economic Development Intervenors have firsthand knowledge of how constructing the SNG Facility will bring much-needed relief to the area and many benefits to the State in general. The project will create thousands of jobs. Chicago’s Southeast Side and the entire state will also benefit from the SNG Facility’s environmentally cutting-edge technology. More importantly, the consumer protections that the General Assembly included in its legislation will ensure that these jobs can be created without leaving Illinois ratepayers with the bill.

After actively participating in the legislative process that enabled this SNG Facility, the Economic Development Intervenors fully comprehend and understand the limited role for the Commission in this matter. Accordingly, the Economic Development Intervenors urge the Commission appropriately to reach a decision on rehearing that respects and reflects a carefully crafted, legislatively mandated division of power between several administrative agencies. Not only do the statutory directives in Public Acts 97-0096 and 97-0630 define this delegation, but the subsequently adopted resolutions by both the Illinois House of Representatives and Senate make it clear that the Order adopted by the Commission on January 10, 2012, defied the legislature’s division of power. Therefore, the Economic Development Intervenors respectfully submit these Verified Comments requesting that the Commission enter an Order on Rehearing that incorporates the intent of the Illinois General Assembly in passing the legislation that will

bring thousands of jobs and untold amounts of benefits to the City of Chicago, the surrounding region, and the State of Illinois.

II. THE COMMISSION SHOULD ENABLE THE SNG FACILITY'S CONSTRUCTION TO REALIZE THE VAST BENEFITS THAT THE GENERAL ASSEMBLY INTENDED

The Commission should adopt an Order on Rehearing that accurately reflects the legislature's intent to promote job creation and other benefits throughout Illinois. Not only will the SNG Facility foster new forms of energy generation into the region, but it will help the entire state recover from the recent economic downturn. The Economic Development Intervenors, representing those who have been hit particularly hard by the worst recession in the state—and country—since the Great Depression, urge the Commission to realize the General Assembly's intent and allow for the SNG Facility to be built, thousands of jobs to be created, and billions of dollars to be injected into the Illinois economy.

The number of jobs that the SNG Facility will bring to Illinois is substantial. During the nearly four-year construction period, about 1,100 full-time construction jobs and 625 supporting business jobs will be created. *See* CCE Verified Comments, Ex. C at 1 (Nov. 18, 2011). Moreover, once the SNG Facility is operational, it will provide more than 200 full-time and 450 supporting jobs. *See id.* Also, because the SNG Facility will be using Illinois coal, an additional 165 mining and 250 supporting jobs will be created in the Illinois coal mining industry. *See id.* at 2; *see also The Economic Impacts of a Coal Gasification Facility in Cook County, Illinois*, Reg'l Dev. Inst. of N. Ill. Univ. (April 3, 2009). The Economic Development Intervenors cannot emphasize enough the impact that these jobs will have in the county, the region, and the state.

The benefits of the SNG Facility do not end with job creation. The project will also inject billions of dollars into the economy by adding more than \$10 billion in economic output to the state and generating about \$1.5 billion in state and local taxes (\$632.5 million in local sales tax

and property tax revenue; \$822.9 million in state tax revenue). *See* CCE Verified Comments, Ex. C at 1-2 (Nov. 18, 2011). This revenue is of particular importance as Illinois consistently faces a staggering deficit, year after year. *See* Monique Garcia, *Illinois budget deficit to hit \$8 billion despite tax increase*, Chi. Trib., Sep. 26, 2011, *available at*: http://articles.chicagotribune.com/2011-09-26/news/ct-met-illinois-state-budget-report-20110926_1_pension-costs-pension-systems-lawmakers. As such, the Economic Development Intervenors wholeheartedly support the SNG Facility because of the vast benefits and revenue generation capabilities that it will bring to this state, and encourage the Commission to do the same and adopt an Order on Rehearing that will realize these benefits and capabilities.

Moreover, the principal Senate and House sponsors of the SNG Facility-enabling legislation, Sen. Donne Trotter and Rep. Marlow Colvin, have pointed out that the numerous Public Acts that culminated in these proceedings are a complicated set of concessions and negotiations designed to balance a variety of competing interests. *See* EDI Brief on Exceptions, Ex. A at 3 (Dec. 27, 2011). As a result of this balancing, Public Acts 97-0096 and 97-0630 give consumers the “benefit of a significant ‘consumer protection reserve account’ which is continuously replenished with 50 percent of additional project revenues” from the SNG Facility. *Id.*; *see also* 220 ILCS 5/9-220(h-2). Additionally, Illinois consumers have been given a \$100 million guarantee in consumer savings. *See* EDI Brief on Exceptions, Ex. A at 3 (Dec. 27, 2011); *see also* 220 ILCS 5/9-220(h-3). These consumer protections and other benefits associated with the SNG Facility are not simply the products of a General Assembly intent on cleaner energy generation. Instead, they are the result of “several years of detailed review, analysis, discussion and debate,” where “the Illinois General Assembly and the Governor made a *public policy*

decision to move forward” with the SNG Facility. EDI’s Brief on Exceptions, Ex. A, 4 (Dec. 27, 2011).

The Economic Development Intervenors urge the Commission to respect this public policy decision and careful balance between numerous, competing interests and forces. Through the debates and discussions surrounding the development of the legislation enabling SNG Facility alone, it has become clear that the citizens of Illinois and the state itself stand to benefit from the project. Millions of dollars can be brought to this state. Thousands of jobs can be created. The General Assembly has been vehemently clear that it intends for the SNG Facility to be built and that it intends for the people of Illinois to realize the benefits that the SNG Facility will bring to them. The Economic Development Intervenors simply ask that the Commission listen to those intentions and ensure that the SNG Facility can be constructed and properly financed under the law.

III. THE COMMISSION SHOULD COMPLY WITH THE LEGISLATIVELY MANDATED FUNCTIONS FROM THE GENERAL ASSEMBLY

The Economic Development Intervenors respect the Commission’s role associated with developing the sourcing agreement for the SNG Facility, but the Commission has gone beyond the scope of its power in the January 10 Order. The General Assembly has worked for years in developing the legislation that enabled the SNG Facility. *See* EDI’s Verified Application for Rehearing at 6-10 (Feb. 9, 2012) (containing a chart detailing the many iterations of the legislation). But the multitude of legislation detailing the Commission’s limited role does not deprive it of its duties. In fact, the legislation confers additional authorization to the Commission. While the legislative intent is for economic development in Illinois, the legislative language forges discrete realms of power between several administrative agencies. Accordingly, the

Economic Development Intervenors request the Commission perform its role and reach decisions that respect legislative intent and reflect this legislatively mandated division of power.

The Commission's specific administrative functions in this matter are governed by Public Acts 97-0096 and 97-0630. *See* P.A. 97-0630, 97th Gen. Assemb., Reg. Session (Ill. 2011); P.A. 97-0630, 97th Gen. Assemb., Reg. Session (Ill. 2011); *see also* 220 ILCS 5/9-220(h-4). To further define the Commission's role, both the Illinois Senate and the Illinois House of Representatives provided additional guidance to the Commission on rehearing. *See* H.R. 755 (Colvin-Madigan), 97th Gen. Assemb., Reg. Sess. (Ill. 2012); S.R. 585 (Trotter-Cullerton), 97th Gen. Assemb., Reg. Sess. (Ill. 2012). In these resolutions, the General Assembly collectively clarifies the Commission's limited role in approving the final sourcing agreements between the Chicago Clean Energy project and gas utilities. *See id.* Specifically, the resolutions express the General Assembly's serious concerns that the January 10 Order improperly:

- (1) modifies the sourcing agreement's cost recovery provisions, despite a clear lack of authority and despite the statutory language and legislative intent of Public Act 97-0096 to provide full cost recovery;
- (2) fails to delete one of the two provisions for early termination that were contained in the sourcing agreements submitted to the Commission by the Illinois Power Agency; and
- (3) imposes an obligation to secure a third-party guarantee that is contemplated nowhere in statute, that exceeds the Commission's limited authority, and that is in addition to the substantial consumer protections already set forth in the statutory framework for the SNG Facility.

Id. at 3. Each of these serious concerns, even independently, if not remedied will prove fatal to the SNG Facility. The Economic Development Intervenors request that the Commission heed to the concerns expressed in the two resolutions.

Moreover, these resolutions are not just useful guides, but they are entitled to be respectfully considered by the Commission. *See Miller v. LaSalle Bank Nat'l Ass'n*, 595 F.3d

782, 790 (7th Cir. 2010). To the extent that the Commission believes the statute is at all unclear, these expressions of intent should be respected as persuasive authority. *See id.*; *see also Ind. State Police Dep't v. Turner*, 577 N.E.2d 598, 602 (Ind. Ct. App. 1991). Not only do the resolutions echo the letter from Sen. Trotter and Rep. Colvin, but they come from the entire House and Senate—the same legislature that enacted Public Acts 97-0096 and 97-0630. Moreover, the resolutions merit particular respect because the General Assembly seldom troubles itself with adopting resolutions regarding statutory interpretation, much less resolutions as direct and strongly worded as the resolutions are here. Accordingly, the Economic Development Intervenors join the members of the House of Representatives and Senate in urging the Commission to “reach a decision that reflects the statutory directives and the intent of the Illinois General Assembly in passing Public Acts 97-96 and 97-630.” H.R. 755, 97th Gen. Assemb., Reg. Sess. (Ill. 2012); S.R. 585, 97th Gen. Assemb., Reg. Sess. (Ill. 2012).

Quite simply, the Commission has overstepped its limited role. The Commission is an agency with only the power given to it by statute. *See, e.g., Bus & Prof. People v. Ill. Commerce Comm'n*, 136 Ill. 2d 192, 201 (1989). In this case, the power provided by statute imposes specific and discrete limitations, particularly in Section 9-220(h-4). *See* 220 ILCS 5/9-220(h-4). In exercising its power, the Commission must strictly follow the plain intent of the repeated rounds of legislation aimed to enable the project. Clearly, the General Assembly wants this project to advance under the structure that it created. *See* H.R. 755, 97th Gen. Assemb., Reg. Sess. (Ill. 2012); S.R. 585, 97th Gen. Assemb., Reg. Sess. (Ill. 2012); EDI Brief on Exceptions, Ex. A (Dec. 27, 2011). The Commission must ensure that the SNG Facility is, in fact, completed, subject to reasonable regulatory oversight.


The Commission should exercise restraint here, not only because it would benefit the state through the creation of thousands of jobs and the injection of millions of dollars, but, put bluntly, because the General Assembly has ordered that the Commission exercise restraint and approve the sourcing agreement with only the minor modifications mentioned above. Accordingly, the Economic Development Intervenors respectfully request that the Commission approve the sourcing agreement as required by the statute and as evidenced by the legislative intent.

IV. CONCLUSION

The Economic Development Intervenors fully appreciate the Commission's unique role in this proceeding. However, they also fully appreciate the legislative intent and mandates from the General Assembly, all of which seek to ensure that the SNG Facility is built and properly financed. The January 10 Order fails to comport with the limitations placed upon the Commission by the General Assembly, and results in a situation that is plainly contrary to the legislative intent favoring the development of the SNG Facility with appropriate oversight. To remedy this result, the Economic Development Intervenors respectfully request that the Commission enter an Order on Rehearing that ensures that the General Assembly's intent is honored, consistent with the Commission's legislatively mandated administrative directive.

Respectfully submitted,

THE ECONOMIC DEVELOPMENT INTERVENORS,
comprised of
THE ILLINOIS AFL-CIO,
THE TRADES COUNCIL,
HACIA,
THE ILLINOIS COAL ASSOCIATION,
THE MECHANICAL CONTRACTORS ASSOCIATION,
THE ILLINOIS FAITH BASED ASSOCIATION,
PASTORS UNITED FOR CHANGE,
THE CALUMET AREA INDUSTRIAL COMMISSION,
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By: 

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